

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

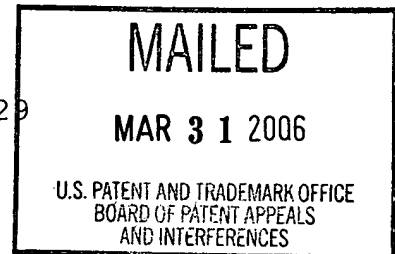
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte PETER J. CHURCHYARD and WILLIAM P. SUPERNOR

Appeal No. 2006-0716
Application No. 09/650,729

ON BRIEF



Before KRASS, BARRETT, and RUGGIERO, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of
claims 1-16.

The invention is directed to maintaining a communications
protocol session in a client/server architecture during periods
of non-activity at the client, such as when time consuming
activities, e.g., a firewall performing a virus scan, may occur
within various agents of the client.

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Representative independent claim 1 is reproduced as follows:

1. A method of maintaining a data communications protocol session, the method comprising the steps of:

sending a request from a client to a server over a data communications network;

receiving said request in said server;

sending a response to said request from said server to said client over said data communications network;

receiving said response in an agent;

determining if illusory content needs to be sent prior to sending said response;

performing processing in said agent as a result of said response;

if illusory content needs to be sent during said processing, sending one or more messages containing illusory content from said agent to said client;

sending said response from said agent to said client; and

receiving said response in said client;

wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing.

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The examiner relies on the following references:

Ji et al. (Ji)	5,623,600	Apr. 22, 1997
Feldman et al. (Feldman)	6,130,889	Oct. 10, 2000 (filed Sep. 30, 1997)
Takaragi et al. (Takaragi)	6,341,349	Jan. 22, 2002 (filed Oct. 30, 1997)
Kloth	6,598,034	Jul. 22, 2003 (filed Sep. 21, 1999)
Hair	6,615,349	Sep. 02, 2003 (filed Feb. 23, 1999)

In addition, the examiner relies on admitted prior art (APA) at page 1, lines 13-24, page 2, lines 1-2, and Figure 1 of the instant disclosure.

Claims 1-16 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner offers APA and Feldman with regard to claims 1, 2, and 13-16, adding, alternatively, Kloth with regard to claims 3-5; Ji with regard to claims 6-8; Hair with regard to claims 9 and 10; and Takaragi with regard to claims 11 and 12.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

With regard to the independent claims, taking claim 1 as exemplary, the examiner asserts that APA discloses the instant claimed subject matter but for the steps of determining if illusory content needs to be sent prior to sending said response; performing processing in said agent as a result of said response; and if illusory content needs to be sent during said processing, sending one or more messages containing illusory content from said agent to said client, wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing.

The examiner then turn to Feldman for a teaching of an Integrated Switch Router (ISR), as an agent, sending one or more "VC KeepAlive" messages (illusory content) to inform its neighbor (client) of its continued existence. In order to prevent a neighbor timeout period from expiring when no other protocol messages have been transmitted (no response protocol messages sent by the client) within the periodic interval time (Feldman, column 7, lines 25-32) (see pages 5-6 of the answer).

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The examiner concludes that it would have been obvious to modify APA to include determining if illusory content needs to be sent during said processing, sending one or more messages containing illusory content from said agent to said client (i.e., sending one of more "VC KeepAlive" messages to a neighbor for preventing a timeout operation), as taught by Feldman "for the purpose of preventing a neighbor timeout period from expiring in the event when no other protocol messages have been transmitted within the periodic interval time (Feldman, col. 7, lines 25-31)" (answer-page 6).

Appellants argue that the examiner's use of APA is misplaced because the cited portion of the specification is merely a recognition of a problem to be solved and is not admitted prior art.

Appellants also argue that the portion of Feldman relied on by the examiner (column 7, lines 25-31) makes no disclosure of any "agent" or "client" or "sending one or more messages containing illusory content from said agent to said client" (emphasis added by appellants at page 7 of the principal brief).

Appellants dispute the examiner's interpretation of Feldman's ISR as an "agent" and the examiner's interpretation of Feldman's neighbors as "clients."

At page 8 of the principal brief, appellants offer definitions of the terms "agent" and "client." The offered definition of "agent" is a "program that performs some information gathering or processing task in the background. Typically, an agent is given a very small and well-defined task." The offered definition of "client" is "...an application that runs on a personal computer or workstation and relies on a server to perform some operations. For example, an e-mail client is an application that enables you to send and receive e-mail."

From this, appellants conclude that the IP router of Feldman does not meet the claimed "client" because it does not constitute an application that runs on a workstation or computer for relying on a server to perform operations. Appellants assert that only appellants teach sending one or more messages containing illusory content "from said agent to said client" for the specific purpose of preventing the client from timing out as a result of security processing.

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Appellants further contend that the VC KeepAlive message of Feldman contains no "illusory content," as used in the specification, at page 9, wherein the use of illusory content creates very little impact on the processing within the entities that do not recognize it.

Moreover, appellants argue that the claims require the determination of whether illusory content needs to be sent "prior to sending said response," whereas Feldman's VC KeepAlive message is "only sent when no other protocol messages have been transmitted within the periodic interval time" and is sent "after initialization."

We have reviewed the evidence in this case, including, inter alia, the reference disclosures and the arguments of appellants and the examiner, and we conclude therefrom that the examiner has not established a prima facie case of obviousness within the meaning of 35 U.S.C. § 103.

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In rejecting claims under 35 U.S.C. §103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). To reach a conclusion of obviousness under § 103, the examiner must produce a factual basis supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). The examiner may satisfy his/her burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

At the outset, we note that we agree with appellants that the examiner may not use page 2, lines 13-19, of the instant specification as admitted prior art since this portion relates to

a statement of the problem to be solved by appellants (see page 6 of the principal brief). However, it appears to us that the examiner is relying on page 1, line 13, through page 2, line 2, of the specification as APA (see page 4-5 of the answer).

In any event, APA is cited to show that it was well known in the art to send a request from a client to a server over a network, receive the request in the server, send a response to the request from the server to the client over the network, and receive a response. We think it is beyond dispute that so much was, indeed, well known in the art of client-server communication.

The issue is whether it would have been obvious to modify such a client-server communication system to include the steps of determining if illusory content needs to be sent prior to sending said response; performing processing in an agent as a result of said response; and if illusory content needs to be sent during said processing, sending one or more messages containing illusory content from said agent to said client, wherein said one or more messages containing said illusory content is sent for preventing a time out operation as a result of security processing.

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We conclude that such a modification would not have been obvious based on the evidence provided by the examiner.

Feldman does, indeed, teach, at column 7, lines 25-31, the concept of sending a message (possibly "illusory content") for the purpose of preventing a time out period from expiring, similar to appellants' claimed prevention of a time out operation. The problem, as we see it, is that Feldman is not concerned with a client-server network or relationship, as claimed. While Feldman is concerned with a scheme using standard IP routing protocols as the basis for switching IP datagrams, packets, frames, and other data units in switching environments in a way that allows a network to continue to function and appear as a standard IP network, with much higher performance, we find nothing within Feldman analogous to the client-server relationship set forth in the instant claims. Merely because APA is evidence of a client server relationship wherein requests are sent and received over a network, this, per se, is insufficient reason to apply Feldman's method of preventing a time out period from expiring to such a client-server network.

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It does not appear reasonable to us for the examiner to equate Feldman's IP router to the claimed "agent" and to equate Feldman's disclosed neighbors as the claimed "client," especially in view of appellants' specific definitions of these terms at page 8 of the principal brief.

These definitions appear reasonable to us and while appellants assert that Feldman's IP router does not constitute any sort of program that performs a processing task in the background and does not constitute an application that runs on a workstation or computer for relying on a server to perform operations, thus not meeting the definitions, the examiner remains silent.

While the examiner asserts that Feldman's ISR "could be given a broad and reasonable interpretation as an agent" (answer-page 13) and that Feldman's neighbor can be "read as a client" (answer-page 13), the examiner offers no explanation as to why such interpretations are deemed to be reasonable, especially in the face of appellants' definitions as to what an "agent" and a "client" must constitute.

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REVERSED


ERROL A. KRASS)
Administrative Patent Judge)


LEE E. BARRETT
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Joseph F. Ruggiero
JOSEPH F. RUGGIERO
Administrative Patent Judge

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